

FILED

JUL 27 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

FRANCO VERGARA-ROMANO, aka
Rojelio Subrita-Lima,

Defendant - Appellant.

No. 05-50072

D.C. No. CR-04-03036-RTB

MEMORANDUM^{*}

Appeal from the United States District Court
for the Southern District of California
Roger T. Benitez, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Franco Vergara-Romano appeals from his 54-month sentence imposed following a guilty plea for three counts of unlawful entry into the United States, in violation of 8 U.S.C. § 1325. Vergara-Romano contends that the district court

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

erred by failing to properly consider the sentencing factors of 18 U.S.C. § 3553, in violation of *United States v. Booker*, 543 U.S. 220 (2005), by improperly calculating his applicable Guidelines range, and by failing to state its reasoning before imposing a term of supervised release as mandated by 18 U.S.C. § 3553(c). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

A district court's imposition of a sentence is reviewed for reasonableness. *See Booker*, 543 U.S. at 261-62. While “the district court must have sufficiently considered the Guidelines as well as the other factors listed in § 3553(a),” *Booker* “does not necessitate a specific articulation of each factor separately, but rather a showing that the district court considered the statutorily-designated factors in imposing a sentence.” *United States v. Knows His Gun*, 438 F.3d 913, 918 (9th Cir. 2006).

The record shows that the district court, in open court, properly considered the sentencing factors of 18 U.S.C. § 3553, including the advisory nature of the Guidelines, the relevant Guidelines range, the nature and seriousness of the offense, the history and characteristics of Vergara-Romano, and deterrence and protection of the public, before imposing its sentence. Accordingly, the sentence imposed did not violate *Booker*. *See Knows His Gun*, 438 F.3d at 918.

Vergara-Romano's contention that the district court erred in its calculation by applying the Guidelines to a misdemeanor count fails because it is not supported by the record.

Finally, Vergara-Romano contends that the district court failed to state its reasoning in open court before imposing a term of supervised release as required by 18 U.S.C. § 3553(c). The record belies this contention. *See United States v. Fifield*, 432 F.3d 1056, 1064 (9th Cir. 2005).

AFFIRMED.